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DITTHAVONG MORI & STEINER, P.C.
918 PRINCE STREET
ALEXANDRIA, VA 22314

EXAMINER	
BOCURE, TESFALDET	

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PHILIP KELLER

Appeal 2010-009252
Application 09/413,821
Technology Center 2600

Before, and KRISTEN L. DROESCH, KALYAN K. DESHPANDE, and JULIE K. BROCKETTI, Administrative Patent Judges.

BROCKETTI, Administrative Patent Judge.

DECISION ON APPEAL

STATEMENT OF THE CASE

Introduction

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1-4. We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claim

Exemplary independent claim 1 under appeal reads as follows:

(1) A method of configuring a transceiver having an output driver for driving an output terminal to provide data transmission via residential twisted pair wiring, the method comprising the steps of:

setting a DC level at the output terminal for supplying a transmit signal of a prescribed level to the residential twisted pair wiring,

comparing a controlled value representing the DC level with a predetermined threshold level, and

controlling the output driver until the controlled value is equal to the threshold level.

Rejections on Appeal

The Examiner rejected claims 1-4, under 35 U.S.C. § 103(a) as being unpatentable over Cheng et al. (US 6,377,666 B1, April 23, 2002).

Appellant's Contentions

The Appellants contends that the Examiner erred in rejecting claims 1-4 because:

"The control logic of Cheng does not compare a controlled value representing the DC level set at the output transmit terminal with a predetermined threshold signal to control the output driver until the controlled value is equal to the threshold level…."
(App. Br. 5).

Issues on Appeal

Did the Examiner err in rejecting claims 1-4 as being obvious because Cheng et al., fails to teach or suggest the disputed claim limitation?

ANALYSIS

We agree with Appellant's contention. Our review finds that Cheng et al., fails to teach the argued claim limitations.

Obviousness requires a suggestion of all the elements in a claim (CFMT, Inc. v. Yieldup Int'l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003)), and "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398, 418 (2007). Furthermore, all the claim limitations must be taught or suggested by the prior art to establish a prima facie case of obviousness. In re Royka, 490 F.2d 981, 984-85 (CCPA 1974).

The Examiner does not direct us to, and we cannot find, where Cheng et al. teaches comparing a controlled value representing the DC level with a predetermined threshold level, and then controlling the output driver until the controlled value is equal to the threshold level. The Examiner's conclusory statement that it is "obvious" to one of ordinary skill in the art that the

controller/logic unit of Cheng to/should have a comparator (Ex. Ans. 5 & 7) does not provide the necessary teaching or suggestion by the prior art to establish a prima facie case of obviousness.

We are not persuaded by the Examiner's contentions in support of the Examiner's determination that the claimed invention would have been obvious to one of ordinary skill in the art, we find that the Examiner has not established, a prima facie case of obviousness for claims 1-4.

CONCLUSIONS

(1) Appellants have established that the Examiner erred in rejecting claims 1-4 as being unpatentable under 35 U.S.C. § 103(a).

(2) On this record, claims 1-4 have not been shown to be unpatentable.

DECISION

The Examiner's rejection of claims 1-4 is reversed.

REVERSED

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